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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,017

03/26/2004

James Jolly Clark

5853-00504

9609

35690

7590

12/05/2007

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.

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EXAMINER

JARRETT, RYAN A

ART UNIT

PAPER NUMBER

2125

MAIL DATE

DELIVERY MODE

12/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,017

Applicant(s)

CLARK ET AL.

Examiner

Ryan A. Jarrett

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-61 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, and 28, drawn to an infrared transceiver.
- II. Claims 1, 3-6, and 28, drawn to hand-held devices.
- III. Claims 1, 7-8, and 28, drawn to postal codes.
- IV. Claims 1, 9-14, and 28, drawn to programming dates and times.
- V. Claims 1, 15, and 28, drawn to soil type.
- VI. Claims 1, 16, and 28, drawn to type of vegetation.
- VII. Claims 1, 17, and 28, drawn to stress factor.
- VIII. Claims 1, 18, 28, and 29, drawn to initiating irrigation.
- IX. Claims 1, 19, 20, 28, and 30, drawn to terminating and/or inhibiting irrigation.
- X. Claims 1, 21, and 28, drawn to a solar panel supplying electricity to a sensing unit.
- XI. Claims 1, 22, 28, and 33, drawn to community irrigation instructions.
- XII. Claims 1, 23, and 28, drawn to a sensing unit providing output to a computer.
- XIII. Claims 1 and 24-28, drawn to valves.
- XIV. Claims 1, 28, and 31, drawn to controlling irrigation based on assessed solar insolation.

- XV. Claims 1, 28, and 32, drawn to assessing zonal evapotranspiration based at least partially on assessed solar insolation.
- XVI. Claims 34, 35, 48, and 49, drawn to a pager device.
- XVII. Claims 34, 36, 48, and 50, drawn to an infrared receiver.
- XVIII. Claims 34, 37, 48, and 51, drawn to a single frequency device.
- XIX. Claims 34, 38, 48, and 52, drawn to an assignable frequency device.
- XX. Claims 34, 39, 48, and 53, drawn to specific community irrigation instructions.
- XXI. Claims 34, 40, 48, and 54, drawn to postal zones.
- XXII. Claims 34, 41, 48, 55, drawn to a solar panel configured to supply electricity to a sensing unit.
- XXIII. Claims 34, 42, 48, and 56, drawn to a wind switch.
- XXIV. Claims 34, 43, 48, and 57, drawn to a wind speed sensing unit.
- XXV. Claims 34, 44, 48, and 58, drawn to controlling irrigation based on assessed solar insolation.
- XXVI. Claims 34, 45, 48, and 59, drawn to a specific moisture collector.
- XXVII. Claims 34, 46, 48, and 60, drawn to assessing an irrigation need based on regional evapotranspiration information.
- XXVIII. Claims 34, 47, 48, and 61, drawn to a specific moisture gauge.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-XXVIII are each related as combination and subcombination, or vice-versa. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combinations as claimed do not require the particulars of the subcombinations as claimed, and the subcombinations have separate utility, since there exists a two-way distinction between each of Groups I-XXVIII.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper. Numerous and extensive text searches would be required to potentially locate all of the above features, presuming they are not all contained in a single prior art reference.

Claims 1 and 28 link(s) inventions I-XV and claims 34 and 48 link inventions XVI-XXVIII. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s), claim 1, 28, 34, and 48. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

This application contains claims directed to the following patentably distinct species:

laptop computer (claim 4); PDA (claim 5); cell phone (claim 6)

The species are independent or distinct because they are mutually exclusive, different in structure, and nothing in the record shows them to be obvious variants in the context of the claimed invention.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic. This species election is only applicable if main Invention II is elected above.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ryan A. Jarrett
Primary Examiner
Art Unit 2125



12/02/07

**RYAN A. JARRETT
PRIMARY EXAMINER**